

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA                  )  
  )  
  )  
v.    )         Criminal No. 05-10218-RCL  
  )  
JESSE WILSON                                )  
  )  
  )

GOVERNMENT'S MEMORANDUM IN OPPOSITION  
TO DEFENDANT'S MOTION TO SUPPRESS

The government hereby files this memorandum in opposition to defendant Jesse Wilson's Motion to Suppress. Wilson is charged in a one-count superseding indictment with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §922(g)(1). He has moved to suppress the firearm and ammunition, claiming that the police officers who arrested him had no legitimate reason to stop the automobile in which he was a passenger.

For the reasons set forth below, this Motion should be denied.

FACTUAL BACKGROUND

On July 21, 2005, Brockton police officers were in an unmarked police car on patrol monitoring the activity at the intersection of Warren Ave. and Highland Street in Brockton, an area known for street level drug dealing, violent crimes and

prostitution.<sup>1</sup> While stopped at the signal light at the intersection of Legion Parkway and Warren Ave., the officers saw a green car pull out of a gas station parking lot at a high rate of speed. The driver was going so fast and carelessly that he drove into the opposite lane of traffic, causing a vehicle traveling towards him to veer to the side of the road to avoid a collision. The green car continued down Highland and the police officers activated their emergency lights. The green car slowed down, but continued driving. As the police car got closer, the green car pulled to the side of the road and stopped. The police officers approached the green car and observed the defendant Jesse Wilson in the back seat with his hands on his lap and a black T-shirt draped over his lap. Wilson kept moving in his seat and the officers asked him to get out of the car. As he did so, one of the police officers observed a gun in the back seat where Wilson had been sitting. The officer yelled "gun." The driver and front seat passenger both got out of the car and fled on foot. The driver, Andrew Nelson ("Nelson"), was apprehended by other Brockton police officers and charged with, among other

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<sup>1</sup> The information concerning the traffic stop, arrest and seizure of the gun and ammunition are based upon the narrative contained in the Brockton Police Department Arrest Report, which was prepared contemporaneously by one of the arresting officers, Erik Hilliard, on July 21, 2005, and signed by him under the pains and penalties of perjury. A copy of the report is attached as Exhibit A.

things, operating to endanger.<sup>2</sup> Wilson also attempted to flee, but was stopped and arrested after a struggle. The officers seized the gun and ammunition and Wilson was eventually indicted for being a felon in possession of those items.

On October 27, 2005, Nelson appeared in the Brockton District Court and admitted to sufficient facts on a charge of Negligent Operation of a Motor Vehicle, as well as to Disturbing the Peace and Failing to Stop for a Police Officer, all in connection with the traffic stop on July 21, 2005. See Record of Criminal Case No. 0515CR004767 from the Brockton District Court, attached as Exhibit B. As a result, Nelson was adjudged "guilty" of the Negligent Operation of a Motor Vehicle charge and sentenced to probation.<sup>3</sup>

During the October 27, 2005 plea hearing, Nelson was sworn and the judge conducted a detailed colloquy to make sure Nelson understood the significance of admitting to sufficient facts and the various rights Nelson would thereby be giving up.<sup>4</sup> The Court advised Nelson that "when you admit to sufficient facts for a

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<sup>2</sup> The front seat passenger, an unknown female, was not caught or identified.

<sup>3</sup> The other two counts were continued without a finding.

<sup>4</sup> Attached as Exhibit C is a copy of the audiocassette recording of the October 27, 2005 hearing. The information contained in this paragraph is derived from that recording, which has not been transcribed. The tape was received by the government on May 31, 2006, and a copy was mailed to Nelson's attorney on June 1, 2006.

finding of guilty that's similar to a guilty plea. It allows a guilty finding to enter either now or some future time without a trial. It allows you to be sentenced as provided by law and you give up some important rights when you do that." The court then detailed the rights Nelson would be giving up, including the right to a jury trial, to have the government prove the charges against him beyond a reasonable doubt, to be represented by counsel at trial and to not testify at trial. The court inquired of Nelson's education and also determined that Nelson had not ingested anything which might impair his ability to understand what he was doing. The court advised Nelson that his admission would permit the court to accept the facts as stated by the government as true, and Nelson responded that he understood. The prosecutor thereafter informed the court of what had occurred on the evening of July 21, 2005.<sup>5</sup> Among other things, he stated that the Brockton police officers "noticed a motor vehicle pull out of a gas station at a high rate of speed" and that it "pulled out wide, so it was in the other lane of travel, causing some traffic to divert itself to avoid being struck by this motor

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<sup>5</sup> During the hearing, Nelson also admitted to sufficient facts in connection with two other unrelated complaints, involving allegations of assault and battery and threatening harm. A fourth complaint, alleging possession of a Class D substance with intent to distribute, was not resolved at that hearing. Nelson pleaded guilty to the drug charge on January 17, 2006 and was sentenced to 90 days in jail. See Record of Criminal Case No. 0515CR006276, attached as Exhibit D.

vehicle." After the prosecutor finished stating the offense conduct for the several charges, the court asked Nelson whether he understood that his admission "lets me accept those facts as true?" Nelson responded "yes." The court then found Nelson guilty on the charge of negligent operation of a motor vehicle and continued without a finding the other two charges from July 21, 2005. At no time during the hearing did Nelson disagree with the prosecutor's statement of the offense conduct.

**WILSON'S MOTION TO SUPPRESS**

On March 15, 2006, Wilson filed a motion to suppress the gun and ammunition, asserting that they were seized in violation of the Fourth Amendment to the U.S. Constitution. In support of the motion, Wilson relies exclusively on Nelson's affidavit which asserts, contrary to the police report and his own admissions in Brockton District Court, that Nelson had been driving at a lawful rate of speed prior to the police stop and at no time committed a driving violation. According to Nelson, he "crossed over from Legion Parkway to Highland Street with the green light at a lawful rate of speed. About 3 or 4 houses down Highland Street, I stopped to say hello to an acquaintance (sic) standing in front of a rooming house. At this time, an unmarked cruiser came up behind and flashed its lights and siren. I pulled over to the side of the road about 3 or 4 houses away so as to not block the street." Nelson aff. Nelson further claimed that he had

"admitted to sufficient facts to driving to endanger" only because he "had other cases pending and just wanted it to go away." Id.

**LAW AND ARGUMENT**

Based on Nelson's version of events, Wilson argues that the police officers did not have a reasonable suspicion that a crime or traffic violation had occurred and thus the vehicle stop was a violation of the Fourth Amendment. Wilson seeks suppression of the fruits of the stop, that being the gun and ammunition.

The government opposes this motion because the Brockton police report and Nelson's own admission under oath to the negligent operation of a motor vehicle charge together establish that the police officers had a reasonable suspicion that a traffic violation had occurred which justified the vehicle stop. In the alternative, however, even if the Court were to credit Nelson's new version of events as described in his affidavit, that statement reflects that Nelson was potentially in violation of Brockton traffic ordinances and thus the police were similarly justified in stopping his car to investigate further.

A police officer is justified in stopping a vehicle to investigate as long as the stop "was supported by a reasonable and articulable suspicion that the vehicle was traveling in violation of a traffic law." United States v. Fox, 393 F.3d 52, 59 (1<sup>st</sup> Cir. 2005), citing Whren v. United States, 517 U.S. 806,

810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.") and United States v. Chhien, 266 F.3d 1, 6 (1<sup>st</sup> Cir. 2001) (A traffic stop "must be supported by a reasonable and articulable suspicion of criminal activity.").

Here, the police officers observed the car leaving the gas station at an excessive rate of speed, swerving into the oncoming lane of traffic, and causing another car to pull to the side to avoid a collision. For those actions, Nelson was charged with negligent operation of a motor vehicle. Nelson later admitted, under oath, to the same version of events as contained in the police report and he was adjudged guilty.<sup>6</sup> Since the evidence establishes that Nelson was driving his car negligently, the police officers were justified in stopping the car.

Assuming, arguendo, that the Court were to reject this version of the events of July 21, but instead credit Nelson's new version as set forth in his affidavit, Wilson's motion should still be denied.

According to Nelson's affidavit, he stopped his car to say hello to an acquaintance, and when the police flashed their

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<sup>6</sup> Nelson's admissions in the Brockton District Court may be treated by this Court as admissions, although they may not be given collateral estoppel effect. United States v. One Parcel of Real Property, 900 F.2d 470 473 (1<sup>st</sup> Cir. 1990); Aetna Casualty & Surety Company v. Niziolek, 395 Mass. 737, 750 (1985).

lights at him, he had to pull over to the side of the road "so as to not block the street." Brockton Ordinance §12-46 states that "No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or highway."<sup>7</sup> Brockton Ordinance §12-71 provides that "No person shall stand or park . . . in any of the following places: . . . (f) Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least ten (10) feet wide for passing traffic." Nelson's version of events establishes that he was potentially in violation of Brockton Ordinances §12-46 and/or §12-71. Therefore, the police had cause to pull him over and investigate further.

That Nelson was potentially in violation of a different statute or ordinance than the ones for which he was cited, that is sufficient to uphold the stop against a Fourth Amendment challenge. Goodwin v. Johnson, 132 F.3d 162, 173 (5<sup>th</sup> Cir. 1998) ("So long as a traffic law infraction that would have objectively justified the stop had taken place, the fact that the police officer may have made the stop for a reason other than the occurrence of the traffic infraction is irrelevant for purposes of the Fourth Amendment . . ."); United States v. Lopez-Moreno, 420 F.3d 420, 431-32 (5<sup>th</sup> Cir. 2005) (holding that even if

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<sup>7</sup> A copy of the relevant Brockton Ordinances are attached as Exhibit E.

officer's subjective motivation for initiating the vehicle stop was his mistaken view that the defendant was violating a specific statute, "the fact that it was objectively reasonable to suspect that [the defendant] was violating [a different statute] means that the initial stop passes constitutional muster."); see also, United States v. Jones, 432 F.3d 34, 40-41 (1<sup>st</sup> Cir. 2005) ("[T]he probable cause inquiry [for an arrest] is not necessarily based upon the offense actually invoked by the arresting officer but upon whether the facts known at the time of the arrest objectively provided probable cause to arrest. . . . If, on the facts known to the arresting officers, there was probable cause to believe he was committing another crime, the arrest was valid."). The Jones holding relied on Devenpeck v. Alford, 543 U.S. 146 (2004). In that §1983 action, the Supreme Court reversed a Ninth Circuit decision which had held that an arresting officers could not have had probable cause to arrest because the crime cited at the time of arrest was not in fact a crime in the state of Washington, and the crimes actually charged were not "closely related" to the offense stated. Devenpeck, 543 U.S. at 152. The Supreme Court stated that "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. . . ." and "his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Id.

at 153. The Court stated further that, "[a]s we have repeatedly explained, the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id.

Here, if Nelson's new version of events is credited, then those "facts" would objectively have provided the police with sufficient reason to stop Nelson's vehicle to investigate further the potential violations of Brockton Ordinances prohibiting unreasonable obstruction of traffic and parking in a roadway without leaving a clear and unobstructed lane.

**Wilson's Motion Should Be Denied Without A Hearing**

A criminal defendant is not entitled, as a matter of right, to an evidentiary hearing on every motion that he chooses to file. United States v. Staula, 80 F.3d 596, 603 (1<sup>st</sup> Cir. 1996). "A hearing is required only if the movant makes a sufficient threshold showing that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record." Id. at 603. In particular, evidentiary hearings on motions to suppress are required only when a defendant makes a sufficient showing that an illegal search has occurred. United States v. Lewis, 40 F.3d 1325 (1<sup>st</sup> cir. 1994). "To make this showing the defendant must allege facts, sufficiently definite,

detailed, and nonconjectural to enable the court to conclude that a substantial claim is presented." Id.

First, Nelson's self-serving affidavit which contradicts his own previous sworn admissions should be deemed by the Court to be insufficient to show that material facts are in doubt. Second, Nelson's affidavit describes an alternative version of events which would have provided the police with a reasonable suspicion to believe that traffic ordinances were being violated and thus cause to stop the vehicle. In either event, Wilson has failed to make a sufficient showing that an illegal search occurred which would merit an evidentiary hearing.<sup>8</sup>

#### **CONCLUSION**

The police had probable cause to believe that the driver of the car in which Wilson was a passenger had committed traffic violations justifying a stop of that vehicle. There was no constitutional violation and Wilson's motion to suppress should

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<sup>8</sup> If the Court grants Wilson an evidentiary hearing, the government requests that Nelson be required to testify and be subject to cross-examination before the government presents its evidence.

be denied without a hearing.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Mark J. Balthazard  
MARK J. BALTHAZARD  
Assistant U.S. Attorney

**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on June 14, 2006.

/s/ Mark J. Balthazard  
MARK J. BALTHAZARD  
Assistant U.S. Attorney

CBTN  
TBR0000042850BROCKTON POLICE DEPARTMENT  
Arrest Booking ReportCase No.  
05008848

| ARRESTEE   |                  |                      |                                       |                    |   |                     |                              |                                 |                             |                  |                                       |
|--|------------------|----------------------|---------------------------------------|--------------------|---|---------------------|------------------------------|---------------------------------|-----------------------------|------------------|---------------------------------------|
| Arrestee Name (Last, First, Middle Initial)<br><b>WILSON, JESSIE</b> |                  |                      |                                       |                    | Arrest No.<br><b>00051478</b>                       |                     | Social Security No.<br>- - - |                                 | Caution                     |                  |                                       |
| Address<br><b>475/MASSACHUSETTS AVE, BOSTON, MA</b>                  |                  |                      |                                       |                    | Scars, tattoos, etc.<br><b>SCAR ON CHEST RT SDE</b> |                     |                              |                                 |                             |                  |                                       |
| Sex<br><b>M</b>  | Race<br><b>B</b> | Height<br><b>509</b> | Weight<br><b>180</b>                  | Hair<br><b>BLK</b> | Eyes<br><b>BRO</b>                                  | Build<br><b>MED</b> | Complexion<br><b>MEDIUM</b>  | Marital Status<br><b>SINGLE</b> | D.O.B.<br><b>04/20/1980</b> | Age<br><b>25</b> | Place of Birth<br><b>BOSTON, MASS</b> |
| Father's Name<br><b>JESSIE WILSON</b>                                |                  |                      | Mother's Maiden Name<br><b>WALKER</b> |                    |   | Wife's Maiden Name  |                              |                                 | Husband's First Name        |                  | Weekly Wage                           |
| Occupation<br><b>UNEMPLOYED</b>                                      |                  |                      | Employer                              |                    |   | Alias/Nickname 1    |                              |                                 |                             |                  |                                       |
| Alias/Nickname 2   |                  |                      |                                       |                    |   | Alias/Nickname 3    |                              |                                 |                             |                  |                                       |

## CHARGE

|                       |                     |                     |
|-----------------------|---------------------|---------------------|
| Charge(s)             | MGL Chapter/Section | Warrant Number      |
| 1) UNL CARRY FIREARM  | <b>269-10A</b>      | <b>HANDGUN</b>      |
| 2) UNL POSS AMMUNITIO | <b>269-1007</b>     |                     |
| 3) RESISTING ARREST   | <b>268-32B</b>      |                     |
| 4) FALSE NAME/SS# PO  | <b>268-34A</b>      | <b>JOHNNY WALKE</b> |

*W&S* *PSN*

|                                  |                      |   |   |   |                                 |
|----------------------------------|----------------------|---|---|---|---------------------------------|
| Arrest Date<br><b>07/21/2005</b> | Time<br><b>17:20</b> | Arrest Location<br><b>HIGHLAND &amp; GLENWOOD</b> | Arresting Officer 1<br><b>SMITH JAMES</b> | Arresting Officer 2<br><b>HILLIARD ERIK</b> | Domestic Violence?<br><b>NO</b> |
|----------------------------------|----------------------|---|---|---|---------------------------------|

## SEARCHED

|   |                                |   |                      |        |                              |
|---|--------------------------------|---|----------------------|--------|------------------------------|
| Booking Date<br><b>07/21/2005</b>         | Time<br><b>18:54</b>           | Booking Officer<br><b>O'MALLEY, PATRICK</b>     | Cell No.<br><b>3</b> | Matron | Police Department on Warrant |
| Rights given by<br><b>LINEHAN RICHARD</b> | Visible Injuries?<br><b>NO</b> | Comments  |                      |        |                              |
| Searched by<br><b>SMITH JAMES</b>         | No. Codefendants<br><b>1</b>   | Codefendant(s) Name(s)<br><b>NELSON, ANDREW</b> |                      |        |                              |

## NOTIFIED

|                   |                 |             |                                  |                    |
|-------------------|-----------------|-------------|----------------------------------|--------------------|
| Person to notify  | Relationship    | Address     | Telephone No.                    | Date/time notified |
| Probation Officer | Release or Hold | Notified by | Juvenile released to (Signature) |                    |

## RELEASE

|  |                    |                    |             |
|--|--------------------|--------------------|-------------|
| I was informed of my right to remain silent, to use a telephone, at my own expense, for the purpose of communicating with family or friends, to arrange bail or to call an attorney. | Arrestee Signature |                    |             |
| Telephone used? (yes or no)  | Bail Amount        | Date/time Released | Released by |

Offense/Incident ! Case No.  
 UNL CARRY FIREARM ! BROCKTON POLICE DEPARTMENT ! ARREST REPORT ! 05008848

Offense Date and Time ! Day ! Arrest Date and Time ! Day ! Domestic Violence?  
 07/21/2005 18:00 ! Thr ! 07/21/2005 17:15 ! Thr ! NO

Location of Offense ! Apt ! Sector ! Wrd ! Prec ! Arresting Officer  
 HIGHLAND & GLENWOOD ST ! ! CC ! 2 ! 2B ! HILLIARD ERIK

Defendant's Name ! Sex ! Race ! Hgt ! Wgt ! D.O.B. ! A/J  
 NELSON ANDREW K ! M ! B ! 506 ! 170 ! 05/18/1985 ! ADULT

Defendant's Address ! Social Security No.  
 31 LINDSEY ST #1 DORCHESTER MA ! 011689303

Offense(s) Charged A ! B ! C  
 UNL CARRY FIREARM ! UNL POSS AMMUNITIO ! RESISTING ARREST

FALSE NAME/SS# PO D ! E ! F  
 ! FL STOP SIG OF PO ! OP MV TO ENDANGER

Weapon(s) Used ! Location of Arrest  
 ! HIGHLAND ST AND GLENWOOD ST

Co-Defendant ! Address ! D.O.B.  
 WILSON JESSIE ! 475/MASSACHUSETTS AVE BOSTON M ! 04/20/1980

Victim 1 ! Sex ! Race ! D.O.B. !  
 SMITH JAMES ! M ! W ! !

Residence Address ! Res Telephone ! Bus Telephone  
 BPD ! ! 941-0234

Victim 2 ! Sex ! Race ! D.O.B. !  
 HILLIARD ERIK ! M ! B ! !

Residence Address ! Res Telephone ! Bus Telephone  
 BPD ! ! 941-0234

Type of Property ! Make ! Model ! Color 1 ! Color 2 ! Value  
 FIREARMS/ACCESSORI ! H&R ! HR922 ! SIL ! SIL ! \$

Type of Property ! Make ! Model ! Color 1 ! Color 2 ! Value  
 FIREARMS/ACCESSORI ! ! ! ! ! \$

Witness 1 ! Sex ! Race ! D.O.B. !  
 O'BRIEN KRISTEN ! F ! W ! !

Residence Address ! Res Telephone ! Bus Telephone  
 BPD ! ! 941-0200

Witness 2 ! Sex ! Race ! D.O.B. !  
 VAZQUEZ CARMEN ! F ! U !

Residence Address ! Res Telephone ! Bus Telephone  
 BPD ! ! 941-0200

Page 2

## Offense/Incident

UNL CARRY FIREARM

BROCKTON POLICE DEPARTMENT  
ARREST REPORT

Case No.

05008848

## Witness 3

SMITH ROBERT

Sex ! Race ! D.O.B !  
M ! W ! !Residence Address  
BPD! Res Telephone ! Bus Telephone  
! ! 941-0200

## Witness 4

SNIGER JAMES

Sex ! Race ! D.O.B !  
M ! W ! !Residence Address  
BPD! Res Telephone ! Bus Telephone  
! ! 941-0200

## Witness 5

MATUKAS DANIEL

Sex ! Race ! D.O.B !  
M ! W ! !Residence Address  
BPD! Res Telephone ! Bus Telephone  
! ! 941-0200State & Reg. ! Year ! Make ! Model ! Color ! Vehicle ID Number ! Status  
MA 49DM53 ! 98 ! PONT ! GRA ! GRN !

## Narrative:

1 While assigned to the 4-12 Detective Division Det. Smith and myself 2 were on patrol in the area of Legion Parkway in an unmarked Police 3 vehicle monitoring the activity at the gas station at the intersection 4 of Warren Av. and Highland St. This particular area is known for its 5 street level drug dealings, prostitution and violent crimes. As we 6 were stopped at the signal light (W) at the intersection of Legion 7 and Warren Av. we observed a green motor vehicle pull out of the gas 8 station parking lot, located at Warren Av and Highland at a high rate 9 of speed. The vehicle fled from the lot taking a right onto Highland 10 St with a sense of urgency. The car pulled out of the lot so quickly 11 and carelessly he drove into the opposite lane of traffic causing a 12 vehicle which was travelling west to pull to the side of the road to 13 avoid an impact. The vehicle continued west, passed a vehicle on the 14 left which was operating in a normal manner. At this time Det. Smith 15 activated the cruisers emergency lights and the vehicle pulled in 16 front of #47 Highland St. The vehicle continued west on Highland St. 17 at a very slow pace, even though he noticed our lights. As we got 18 close to the vehicle it pulled onto the side walk at the intersection 19 of Highland St. and Glenwood St. I approached the passengers side and 20 observed the right rear passenger (later Id'd as Wilson) with his 21 hands on his lap with a black T-shirt draped over his lap. As I got 22 closer to the passengers rear door, I observed the Wilson moving and 23 lean towards the driver. At this same time I observed the passenger 24 in the front (unknown female) make motions towards the glove box. I 25 yelled to the rear passenger to stop moving and put his hands where I could see them. At time I asked the rear passenger what did he move 27 from his lap. The rear passenger stated he was just moving his T-shirt 28 (color black) I ordered the man to stop moving and I ordered the

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Offense/Incident

Case No.

UNL CARRY FIREARM

BROCKTON POLICE DEPARTMENT  
ARREST REPORT

05008848

29 | driver (later Id'd as Nelson) to shut off the vehicle. At this time  
30 | Det. Smith approached the driver and asked for his license and  
31 | registration. It should be noted that as I approached Det. Smith, who  
32 | was a few moments behind me as I approached the vehicle stated both  
33 | the rear passenger and the driver were fixated on me and my location  
34 | and my approach. In fact when Det. Smith asked Nelson for his license  
35 | he startled Nelson. At this time I asked the suspect for his name. He  
36 | stated "Justin" The rear passenger kept moving in his seat and I asked  
37 | him to step from the vehicle. As I opened the door the rear passenger  
38 | "Wilson" step out with both feet, which I immediately felt as if he  
39 | were going to run. I grabbed his right arm to try to get in and  
40 | control him. As I escorted Wilson from the vehicle I observed him to  
41 | not have on the black T-shirt and he was sweating. I looked in his  
42 | face and it was panicked. At this time Det. Smith yelled "Gun!!!!" and  
43 | Wilson immediately pushed off on me and tried to even push me into  
44 | the bushes that were at the corner where we had the vehicle stopped.  
45 | Wilson fought violently twisting, turning failing his free arm, even  
46 | using his body weight to push me off balance. At this time Det. Smith  
47 | ran to my aid and grabbed a hold of the now very slippery Wilson. As  
48 | we continued to subdue Wilson, Det. Smith grabbed hold of Wilson's  
49 | upperbody, my left arm was trapped between Smith's arm and Wilson's  
50 | torso. At this moment I felt a violent tug on my right side where my  
51 | firearm was located. Wilson grabbed my nylon mini-flashlight pouch and  
52 | jerked it. It should be noted that my holstered firearm was located  
53 | directly in front my flashlight pouch approximately 2 inches apart. I  
54 | knew that Wilson was attempting to grab my firearm, but grabbed the  
55 | wrong item. While my left arm was still pinned I grabbed my mini  
56 | flashlight, which was hanging from its pouch, removed it and in  
57 | an attempt to remove Wilson's grip from my issued equipment, I struck  
58 | him on the side of his head and immediately again on the other side of  
59 | his head, causing him to remove his grip from my firearm holster and  
60 | flashlight pouch. The entire time I gave commands to Wilson to let go  
61 | and to get to the ground. After being struck the second time Wilson  
62 | was guided from the bushes where we were fighting with the defendant  
63 | supported and forced to the pavement with an arm bar take down by Det.  
64 | Smith where he was placed into a rear wrist lock and handcuffed using  
65 | a non compliant handcuffing technique. It should also be noted that  
66 | as soon as Det. Smith yelled "Gun" the driver and the front passenger  
67 | got out of the vehicle and fled the area on foot running north on  
68 | Glenwood St. As back up units arrived Ofc. Robert Smith asked were we  
69 | OK I stated yes, and gave a description of the driver and female.  
70 | Prior to Ofc. R Smith giving out the other suspect information, Ofc.  
71 | O'Brien asked were we looking for another party who fled on foot. Ofc.  
72 | O'Brien and the responding cruisers were given the description of a  
73 | black male with a black shirt. Ofc. O'Brien responded by saying she had  
74 | the other suspect running towards Moreland St. The other suspect Id'd  
75 | as Andrew Nelson ran through the yard of 49 Newbury St, through the  
76 | yard of 20 Moreland St, across the street to 15 Moreland St through  
77 | another backyard and was placed under arrest in the area of 20  
78 | Lexington St. The party the cruiser team had detained was the same  
79 | party who fled from the vehicle we had stopped (Ma 49DM53 a green

105 ! a Police Officer.

106 ! Nelson charged with the following: Failure to stop signal Police  
107 ! Officer, Operating to endanger, and Disturbance.

108 ! Citation issued to operator Mr.Nelson M0508532 and m/v towed ]

Signed under the pains & penalties of perjury. (Arresting Officer Signature)

*Sh R 40 #291*

Report Date ! Supervisors Signature

7/21/05

*Sgt D. P. Johnson #245  
07/21/05*

## RECORD OF CRIMINAL CASE

Trial Court of Massachusetts  
District Court Department

|   |                             |  |  |
|---|-----------------------------|--|--|
| DEFENDANT NAME<br>ANDREW K NELSON           |                             | COURT NAME & ADDRESS<br>BROCKTON DISTRICT COURT<br>215 MAIN ST P.O. BOX 7610<br>BROCKTON MA 02303-7610<br>(508) 587-8000 |  |
| DEFENDANT ADDRESS<br>221 PINE GROVE DRIVE   |                             | CITY / TOWN<br>BROCKTON  | STATE<br>MA ZIP CODE<br>02301                          |
| SEX<br>M                                    | DATE OF BIRTH<br>[REDACTED] | CITY OF BIRTH<br>DORCHESTER  | STATE OF BIRTH<br>MA SOCIAL SECURITY NO.<br>[REDACTED] |
| MOTHER'S MAIDEN NAME<br>PARKINSON, MARI     |                             | FATHER'S NAME<br>NELSON, MICHAEL   |  |
| PCF NO.<br>2524459                          | SID NO.                     | DRIVERS LICENSE NO.  |  |
| <b>CASE INFORMATION</b>                     |                             |  |  |
| NO. COUNTS<br>3                             | POLICE DEPT<br>BRO          | POLICE INCIDENT NO.<br>05008848  | OFFENSE LOCATION<br>BROCKTON                           |
| CURRENT DEFENSE ATTORNEY<br>MARK S. MACHADO |                             | ATTORNEY TYPE<br>APPOINTED - INDIGENT  |  |
| CURRENT PROSECUTOR                          |                             | COMPLAINANT<br>CESARINI, SGT. ANDREW H.  |  |

**OFFENSE AND JUDGMENT INFORMATION**

COUNT: 1 OFFENSE DATE: JULY 21, 2005  
90/24/E NEGLIGENT OPERATION OF MOTOR VEHICLE

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN  
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: GUILTY  
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06

## SPECIAL CONDITIONS:

SU SUPERVISED PROBATION ORDERED  
 PM PAY MONIES ON ATTACHED "NOTICE TO DEFENDANT" TIMELY  
 SP PAY ANY CHILD SUPPORT ORDER, AS DEFINED IN GL 119A §1A  
 VR ALLOW PROBATION TO VISIT RESIDENCE WHEN HE/SHE REQUIRES  
 AM COMPLETE ANGER MANAGEMENT PROGRAM:  
 APPLIES TO COUNTS 2 AND 3

COUNT: 2 OFFENSE DATE: JULY 21, 2005  
272/53/G DISTURBING THE PEACE

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN  
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: CONT W/O FINDING; SUF. FCTS  
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06

COUNT: 3 OFFENSE DATE: JULY 21, 2005  
90/25/D POLICE OFFICER, FAIL STOP FOR

JUDGMENT DATE: 10/27/05 JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN  
 JUDGMENT METHOD: ADM SUFF FACTS JUDGMENT: CONT W/O FINDING; SUF. FCTS  
 PROBATION START DATE: 10/27/05 PROBATION END DATE: 1/26/06

**BAIL/BOND INFORMATION**

BAIL TYPE BOND AMT SET CASH AMT SET DATE SET JUDGE

CASH ONLY \$500.00 7/22/05 JOHN M. STELLATO

|           |                                |                    |  |
|-----------|--------------------------------|--------------------|--|
| PAGE<br>1 | DATE RECORD PRINTED<br>3/28/06 | A TRUE COPY ATTEST | CLERK MAGISTRATE<br><i>Kenji P. Lunder</i> |
|-----------|--------------------------------|--------------------|--|

## RECORD OF CRIMINAL CASE

0515 CR 004767

Trial Court of Massachusetts  
District Court Department

## FINES/FEES/COSTS ASSESSED

| COUNT # | Fee Code Desc | AMOUNT ASSESSED | AMOUNT PAID/WAIVED | BALANCE DUE |
|---------|---------------|-----------------|--------------------|-------------|
|         | COUNSEL FEE   | \$150.00        | \$150.00           | \$ .00      |
|         | TOTAL         | \$150.00        | \$150.00           | \$ .00      |

## PAYMENT HISTORY

| RECEIPT NO. | RECEIPT DATE | RECEIPT AMOUNT | METHOD OF PAYMENT |
|-------------|--------------|----------------|-------------------|
| 159206      | 1/17/06      | \$150.00       | WAIVED            |

## BAIL HISTORY

| RECEIPT#: | DATE POSTED: | AMOUNT POSTED: |       |
|-----------|--------------|----------------|-------|
| 24367     | 07/25/2005   | \$500.00       |       |
|           | METHOD: CASH |                |       |
| RETURNED: | 10/27/2005   | \$500.00       | CHECK |

## DOCKET ENTRIES

| DATE     | CODE | DOCKET ENTRY  | JDG/MAG             | ACTION DATE |
|----------|------|---|---------------------|-------------|
| 7/22/05  | AC   | APPLICATION FOR COMPLAINT FILED                                     |                     |             |
| 7/22/05  | ZCI  | COMPLAINT ISSUED  | KML                 |             |
| 7/22/05  | ARR  | ARRAIGNMENT SCHEDULED FOR   |                     | 7/22/05     |
| 7/22/05  | PI   | PROBATION INTAKE FORM PRINTED                                       | KML                 |             |
| 7/22/05  | BRW  | BAIL REVOCATION WARNING (276 §58) GIVEN DEFT                        | JMS                 |             |
| 7/22/05  | ARRH | ARRAIGNMENT HELD  | JMS                 | 7/22/05     |
| 7/22/05  | PT   | PETIT TRIAL HEARING SCHEDULED FOR                                   | JMS                 | 9/14/05     |
| 7/22/05  | CAI  | COUNSEL APPOINTED FOR INDIGENT DEFENDANT<br>637285 MACHADO, MARK S. | JMS                 |             |
| 7/22/05  | MITB | MITTIMUS IN LIEU OF BAIL TO   |                     |             |
| 7/22/05  |      | PJ : PLYMOUTH JAIL  |                     |             |
| 9/14/05  | PTCH | PETIT TRIAL CONFERENCE HELD   | PCD                 | 9/14/05     |
| 9/14/05  | PTRF | PETIT TRIAL CONFERENCE REPORT FILED                                 | PCD                 |             |
| 9/14/05  | JT   | JURY TRIAL SCHEDULED FOR  | PCD                 | 10/27/05    |
| 9/14/05  |      | PLEA TENDERED & WITHDRAWN   |                     |             |
| 10/27/05 | AW   | ALIEN WARNING (279 §29D) GIVEN DEFENDANT                            | FXD                 |             |
| 10/27/05 | ASF  | ADMISSION TO SUFF FACTS ACCEPTED AFTER COLLOQ                       |                     |             |
| 10/27/05 | COLL | GUILTY PLEA/ASF COLLOQUY GIVEN                                      | FXD                 | 10/27/05    |
| 10/27/05 | P    | PROBATION UNTIL   |                     | 1/26/06     |
| 10/27/05 | JE   | JUDGMENT ENTERED  | FXD                 |             |
| 10/27/05 | ARMV | ABSTRACT SENT TO REGISTRY OF MOTOR VEHICLES                         | FXD                 | 10/27/05    |
| 10/27/05 | PCFI | PROBATION CONDITIONS FORM ISSUED                                    |                     |             |
| 10/27/05 | PSFI | PROBATION SUPERVISION TERMS FORM ISSUED                             | FXD                 |             |
| 1/17/06  | BF   | BROUGHT FORWARD   | KML                 | 1/26/06     |
| 1/17/06  |      | AT THE REQUEST OF APO L. HANLEY                                     | A True Copy Attest: |             |
| 1/17/06  | SR   | STATUS REVIEW SCHEDULED FOR   | KML                 | 1/17/06     |
| 1/17/06  | AIC  | ACTION IN COURT FORM  | KML                 |             |
| 1/17/06  | JHH  | JUDGE'S HEARING HELD  | DGN                 | 1/17/06     |
| 1/17/06  | ZPTD | PROBATION TERMINATED; DEFENDANT DISCHARGED                          | DGN                 | DGN Court   |

A True Copy Attest:

*[Signature]*

KML

DGN

DGN Court

| PAGE | DATE DOCKET PRINTED | A TRUE COPY ATTEST | CLERK/MAGISTRATE   |
|------|---------------------|--------------------|--------------------|
| 2    | 3/28/06             |                    | <i>[Signature]</i> |

Exhibit C is an audio cassette tape, certified by the Commonwealth of Massachusetts District Court, of an October 27, 2005 plea hearing of Andrew Nelson. The cassette, marked as Exhibit C, will be filed separately with the Court (see attached letter), and a copy has been sent to the attorney for the defendant. The cassette has the following information on the label:

Andrew Nelson  
Brockton 4767            10-27-05  
Tape 402-88-975

Serial No. 213568



I

**U.S. Department of Justice**

*Michael J. Sullivan  
United States Attorney  
District of Massachusetts*

---

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse  
1 Courthouse Way  
Suite 9200  
Boston, Massachusetts 02210*

June 14, 2006

**BY HAND**

Lisa Hourihan  
Deputy Clerk  
United States District Court  
District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way - Suite 2300  
Boston, MA 02210

Re: United States v. Jesse Wilson  
Cr. No. 05-10218-RCL

Dear Ms. Hourihan:

Enclosed is an audio cassette tape marked Exhibit C for filing in the above-referenced case. I have today filed by ECF Government's Memorandum in Opposition to Defendant's Motion to Suppress, to which the tape is an exhibit. I have filed by ECF a notice with the Memorandum referencing the tape and the fact that it is being filed separately with the Clerk's Office.

If you have any questions about this, please call me at 617-748-3208.

Very truly yours,

MICHAEL J. SULLIVAN  
United States Attorney

By:

\_\_\_\_\_  
MARK J. BALTHAZARD  
Assistant U.S. Attorney

Enc.

cc: Paul Garrity, Esq.  
14 Londonderry Rd.  
Londonderry, NH 03053

**RECORD OF CRIMINAL CASE**

0515 CR 006276

**Trial Court of Massachusetts  
District Court Department**DEFENDANT NAME  
ANDREW K NELSON

DEFENDANT ALIAS(ES)

COURT NAME &amp; ADDRESS

BROCKTON DISTRICT COURT  
215 MAIN ST P.O. BOX 7610  
BROCKTON MA 02303-7610  
(508) 587-8000DEFENDANT ADDRESS  
221 PINE GROVE DRIVECITY / TOWN  
BROCKTONSTATE  
MAZIP CODE  
02301SEX  
M DATE OF BIRTH [REDACTED]CITY OF BIRTH  
DORCHESTERSTATE OF BIRTH  
MASOCIAL SECURITY NO.  
[REDACTED]MOTHER'S MAIDEN NAME  
PARKINSON, MARIFATHER'S NAME  
NELSON, MICHAELPCF NO.  
2524459 SID NO.

DRIVERS LICENSE NO.

LICENSE STATE

**CASE INFORMATION**

|                 |                   |                     |                              |                        |                 |
|-----------------|-------------------|---------------------|------------------------------|------------------------|-----------------|
| NO. COUNTS<br>1 | POLICE DEPT<br>SP | POLICE INCIDENT NO. | OFFENSE LOCATION<br>BROCKTON | ARREST DATE<br>9/17/05 | MV CITATION NO. |
|-----------------|-------------------|---------------------|------------------------------|------------------------|-----------------|

|   |                                       |
|---|---------------------------------------|
| CURRENT DEFENSE ATTORNEY<br>MARK S. MACHADO | ATTORNEY TYPE<br>APPOINTED - INDIGENT |
|---|---------------------------------------|

|                    |                                       |
|--------------------|---------------------------------------|
| CURRENT PROSECUTOR | COMPLAINANT<br>BUSHFAN, SGT. HENRY G. |
|--------------------|---------------------------------------|

**OFFENSE AND JUDGMENT INFORMATION**

COUNT: 1 OFFENSE DATE: SEPTEMBER 17, 2005  
94C/32C/C DRUG, POSSESS TO DISTRIB CLASS D

JUDGMENT DATE: 1/17/06

JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.

JUDGMENT METHOD: GUILTY PLEA

JUDGMENT: GUILTY

PROBATION START DATE: 1/17/06

PROBATION END DATE: 1/17/07

## SPECIAL CONDITIONS:

SU SUPERVISED PROBATION ORDERED

PM PAY MONIES ON ATTACHED "NOTICE TO DEFENDANT" TIMELY

SP PAY ANY CHILD SUPPORT ORDER, AS DEFINED IN GL 119A §1A

VR ALLOW PROBATION TO VISIT RESIDENCE WHEN HE/SHE REQUIRES

AM COMPLETE ANGER MANAGEMENT PROGRAM:

UR URINALYSIS AS REQUIRED BY PROBATION OFFICER

ND NOT CONSUME OR POSSESS ANY ILLICIT DRUGS

MUST NOT ABUSE VICTIM

URINALYSIS AND ANY OTHER TESTING DEEMED NECESSARY

JAIL START DATE: 1/17/06 INSTITUTION: PLYMOUTH HOUSE OF CORRECTION

TERM OF SENTENCE: 90 DAYS

AMOUNT TO BE SERVED:

JAIL CREDIT DAYS: CONSECUTIVE TO:

CONCURRENT WITH:

**BAIL/BOND INFORMATION**

BAIL TYPE BOND AMT SET CASH AMT SET DATE SET JUDGE

PERSONAL RECOG

9/19/05 HON. JULIE J. BERNARD

**DOCKET ENTRIES**

DATE CODE DOCKET ENTRY

JDG/MAG ACTION DATE

A True Copy of Arrest Order  
Court  
K.P. Funder

PAGE  
1 DATE RECORD PRINTED  
3/28/06  
A TRUE COPY ATTEST

CLERK/JUDGE

|         |      |   |     |         |
|---------|------|---|-----|---------|
| 1/17/06 | COLL | GUilty PLEA/ASF COLLOQUIUM GIVEN            |     | 1/17/06 |
| 1/17/06 | P    | PROBATION UNTIL                             |     | 1/17/07 |
| 1/17/06 | JE   | JUDGMENT ENTERED                            | DGN |         |
| 1/17/06 | ARMV | ABSTRACT SENT TO REGISTRY OF MOTOR VEHICLES | DGN | 1/17/06 |
| 1/17/06 | PCFI | PROBATION CONDITIONS FORM ISSUED            |     |         |

1/17/06

1/17/07

DGN

DGN

1/17/06

Court

A True Copy Attest:  
K. P. Funder

|      |                     |                    |                  |
|------|---------------------|--------------------|------------------|
| PAGE | DATE DOCKET PRINTED | A TRUE COPY ATTEST | CLERK/MAGISTRATE |
| 2    | 3/28/06             |                    | K. P. Funder     |

CRF21B 3/28/06 10:53 AM

BROCKTON CITY CLERK

## BROCKTON CODE

§ 12-28

to help defray the costs of administering the rules and regulations established by the chief of police.

The above list shall be in the possession of the desk officers at the city police station. When reports are received of a motor vehicle disabled on any street in the city, the desk officer shall call in rotation the licensed persons on the list described above.

To appear on the list described above, the persons shall agree in writing to indemnify and hold harmless the city from any claims or causes of action for any injuries or damages, of any kind or nature caused by the towing of motor vehicles pursuant to this section.

(Ord. No. D302, 7-22-81).

Secs. 12-29-12-40. Reserved.

### ARTICLE III. GENERAL RULES OF OPERATION

#### Sec. 12-41. Obedience to traffic signs, etc.

No driver of any vehicle shall disobey the instructions of any official traffic-control signal, sign, marking, marker or legend, unless otherwise directed by a police officer.  
(Code 1985, § 13-28)

#### Sec. 12-42. Driving on roadways lawed for traffic.

When any roadway has been divided into lanes, a driver of a vehicle shall drive so as to be entirely within a single lane and shall not move from this lane in which he is driving until he has first ascertained if such movement can be made with safety.  
(Code 1985, § 13-29)

*State law reference—Similar provisions, G.L. c. 89, § 4A.*

#### Sec. 12-43. Driving on right side of roadway.

(a) Upon all roadways, the driver of a vehicle shall drive in the lane nearest the right side of the roadway when such lane is available for travel except when overtaking another vehicle or when preparing for a left turn.

(b) Upon such roadways as are divided by a parkway, grass plot, reservation, viaduct, subway or by any structure or area,  
Sup. No. 9

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## MOTOR VEHICLES AND TRAFFIC § 12-46

drivers shall keep to the right of such division except when otherwise directed by an officer, signs, signals or markings.

(Code 1965, § 12-30)

State law reference—Driving on right, G.L. c. 89, §§ 4, 4B.

## Sec. 12-44. Overtaking and passing.

The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the roadway to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead.

(Code 1965, § 12-31)

State law reference—Passing vehicle traveling in same direction, G.L. c. 89, § 2.

## Sec. 12-45. Driver to give way to overtaking vehicle.

The driver of a vehicle when about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right in favor of the overtaking vehicle, on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(Code 1965, § 12-32)

State law reference—Giving way to overtaking vehicle, G.L. c. 89, § 2.

## Sec. 12-46. Obstructing traffic unnecessarily.

No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or highway. Officers are authorized to require any driver who fails to

Sup. No. 3

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BROCKTON CITY CLERK

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§ 12-50

## MOTOR VEHICLES AND TRAFFIC

comply with this section to drive to the side of the roadway and wait until such traffic as has been delayed has passed.  
(Code 1985, § 13-38)

**Sec. 12-47. Obstruction of intersection or crosswalk.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians notwithstanding any traffic-control signal indication to proceed.  
(Code 1985, § 13-34)

**Sec. 12-48. Following too closely.**

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the street or highway.  
(Code 1985, § 13-35)

**Sec. 12-49. Distance between slow-moving vehicles.**

Upon roadways less than twenty-seven (27) feet wide and upon which vehicular traffic is permitted to operate in both directions, the driver of any slow-moving vehicle, when traveling outside of a business or residential district, shall not follow another slow-moving vehicle within two hundred (200) feet, but this shall not be construed to prevent such slow-moving vehicle from overtaking and passing another slow-moving vehicle. This section shall not apply to funerals or other lawful processions.  
(Code 1985, § 13-36)

**Sec. 12-50. Care in starting, stopping, turning or backing.**

The driver of any vehicle before starting, stopping, turning from a direct line or backing shall first see that such movement can be made in safety. If the operation of another vehicle should be affected by a stopping or turning movement, the driver of such vehicle shall be given a plainly visible signal, as required by law.  
(Code 1985, § 13-37)

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BROCKTON CITY CLERK

2005

**§ 12-51 BROCKTON CODE****Sec. 12-51. Sounding warning devices.**

The driver of a vehicle shall give audible warning with his horn or other suitable warning device whenever necessary to insure safe operation.  
(Code 1965, § 12-43)

**Sec. 12-52. Driving through safety zone.**

It shall be unlawful for the driver of a vehicle, except on signal from a police officer, to drive the same over or through a safety zone.  
(Code 1965, § 12-44)

**Sec. 12-53. Driving on road surfaces under construction or repair.**

No operator shall enter upon the road surface of any street or highway or section thereof, when, by reasons of construction, surface treatment, maintenance or the like, or because of some unprotected hazard, such road surface is closed to travel, and one or more signs, lights or signals have been erected to indicate that all or part of the road surface of the street or highway is not to be used, or when so advised by an officer, watchman, member of a street or highway crew or employee of the city, either audibly or by signals.  
(Code 1965, § 12-46)

**Sec. 12-54. Driving on sidewalks.**

The driver of a vehicle shall not drive, wheel or draw upon any sidewalk except at a permanent or temporary driveway. This section shall not apply to a child's carriage pushed or drawn by hand.  
(Code 1965, §§ 12-47, 22-19)

**Secs. 12-55-12-70. Reserved.****ARTICLE IV. STOPPING, STANDING AND  
PARKING GENERALLY****Sec. 12-71. General prohibitions.**

No person shall stand or park and no person shall allow, per-

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## MOTOR VEHICLES AND TRAFFIC

§ 12-72

unit or suffer any vehicle registered in his name to stand or park in any of the following places:

- (a) Within an intersection.
  - (b) Upon any sidewalk.
  - (c) Upon any crosswalk.
  - (d) Upon the roadway in a rural or sparsely settled district.
  - (e) Upon a roadway where parking is permitted unless both wheels on the right side of the vehicle are within twelve (12) inches of the curb or edge of the roadway, except upon those streets which are designated as one-way streets. On such one-way streets vehicles shall be parked in the direction in which the vehicle is moving and with both wheels within twelve (12) inches of the curb. This shall not apply to streets or parts of streets where angle parking is required by this chapter.
  - (f) Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least ten (10) feet wide for passing traffic.
  - (g) Upon any street or highway within ten (10) feet of a fire hydrant.
  - (h) Upon or in front of any private road, driveway or walk.
  - (i) Upon any street or highway within twenty (20) feet of an intersecting way, except alleys.
- (Code 1985, § 13-49)

## Sec. 12-72. Temporary parking prohibitions.

The chief of police is authorized to prohibit, temporarily, parking on any street or highway or part thereof in an impending or existing emergency, or for a lawful ensemble, demonstration or procession; provided, there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of any officer.

(Code 1985, § 13-15)

**BROCKTON CODE  
§ 12-73****Sec. 12-73. Parking vehicles for sale prohibited.**

It shall be unlawful for any person to park upon a street or highway any vehicle displayed for sale.  
(Code 1965, § 12-69)

**Sec. 12-74. Reserved.****Sec. 12-75. Parking vehicles in fire lanes.**

(a) It shall be unlawful to obstruct or block a private way with a vehicle or other means within areas designated and posted as fire lanes, or to leave a vehicle unattended within areas so designated and posted.

(b) The traffic commission is authorized to enact rules and regulations governing the designation and posting of fire lanes within or upon private ways and for the removal of vehicles or other objects left unattended, obstructing or blocking fire lanes so designated and posted.

(c) The penalty for violations of this section or of the rules and regulations of the traffic commission adopted pursuant to this section, shall be one hundred dollars (\$100.00) for each such offense. Each day or portion of a day that any violation is allowed to continue shall constitute a separate offense. (Code 1965, § 6-8; Ord. No. D229, 1-15-97; Ord. No. D849, 8-30-94)

**Sec. 12-76. Parking for the handicapped.**

(a) *Licenses plates required.* It is unlawful for any person to park or leave standing any vehicle in a stall or space designated for physically handicapped persons, if said stall or space is posted or marked in a prescribed way, unless said vehicle displays distinguishing license plates issued for handicapped persons, including disabled veterans.

(b) *Property owner to provide spaces; number.* Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has the right of access as

§ 12-101

BROCKTON CODE

#### ARTICLE V. PARKING METERS\*

##### Sec. 12-101. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**Parking meter.** Any mechanical device, not inconsistent with the provisions of this article, and placed or erected on any public way within the city for the regulation of parking. Each parking meter installed shall indicate by proper legend the legal parking time established by this article and when operated shall at all times indicate the balance of legal parking time permitted and at the expiration of such period shall indicate illegal or overtime parking.

**Parking meter space.** Any space within a parking meter zone, adjacent to a parking meter, which is duly designated for the parking of a single vehicle by lines painted on the surface of the street adjacent to adjoining each parking meter.

**Parking meter zone.** Any street or portion thereof upon which parking meters are installed and in operation and upon which

\*State law references—Parking meters generally, G.L. c. 40, §§ 22A–22C.

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## BROCKTON CITY CLERK

## MOTOR VEHICLES AND TRAFFIC § 12-100

invees or licensees, shall reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by Section 2 of Chapter 90 of the Massachusetts General Laws.

| Total Number of Parking Spaces<br>in Area | Number of Handicapped<br>Spaces Required |
|---|--|
| More than 15, less than 25                | 1  |
| More than 25, less than 40                | 5%, not less than 2                      |
| More than 40, less than 100               | 4%, not less than 3                      |
| More than 100, less than 200              | 3%, not less than 4                      |
| More than 200, less than 500              | 2%, not less than 6                      |
| More than 500, less than 1,000            | 1½%, not less than 10                    |
| More than 1,000, less than 2,000          | 1%, not less than 15                     |
| More than 2,000, less than 5,000          | %, not less than 20                      |
| More than 5,000                           | ½ of 1%, not less than 30                |

(c) **Marking of spaces.** Parking spaces designated as reserved shall be identified by the use of the international symbol of handicapped parking and shall be identified by the use of above-grade permanent signs with white lettering against a blue background at a height of not less than five (5) feet, nor more than eight (8) feet to the top of the sign. The sign, minimum of twelve (12) inches by sixteen (16) inches, shall contain the international symbol of accessibility, i.e. a stick figure in a wheelchair, and may also include wording identifying this use.

(d) **Penalties.** The penalty for violations of this section shall be one hundred dollars (\$100.00). Also, the vehicle so parked in violation hereof may be removed according to the provisions of Section 120D of Chapter 266 of the Massachusetts General Laws. (Ord. No. D152, 4-28-83; Ord. No. D164, 9-29-83; Ord. No. D248, 2-22-88; Ord. No. D249, 4-1-88; Ord. No. D352, 11-19-94)

**Editor's note—Ordinance No. D152, enacted April 28, 1983, did not specifically amend this Code; hence, codification of the substantive provisions of said ordinance, as amended by Ord. No. D164, as § 12-76, is at the discretion of the editor.**

Sects. 12-77—12-100. Reserved.

Supp. No. 12

§90.1